

CS FOR HOUSE BILL NO. 336(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/18

Referred: Rules

Sponsor(s): REPRESENTATIVES MILLETT, Saddler, Spohnholz, Kopp, Tuck, Gara, Grenn, LeDoux, Kito, Johnston, Claman, Zulkosky, Tarr

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to supported decision-making agreements to provide for decision-**
2 **making assistance; and amending Rule 402, Alaska Rules of Evidence."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 13 is amended by adding a new chapter to read:

5 **Chapter 56. Supported Decision-Making Agreements.**

6 **Sec. 13.56.010. Agreements authorized.** (a) Except as provided in (b) and (c)
7 of this section, an adult may enter into a supported decision-making agreement. A
8 supported decision-making agreement allows an adult to receive decision-making
9 assistance with the adult's affairs from one or more other adults.

10 (b) The adult wanting to receive decision-making assistance may not enter
11 into a supported decision-making agreement unless the adult

12 (1) enters into the agreement voluntarily and without coercion or
13 undue influence; and

14 (2) understands the nature and effect of the agreement.

(c) An adult may not enter into a supported decision-making agreement under this section if the agreement encroaches on the authority of a guardian or conservator of the adult, unless the guardian or conservator approves in writing the adult entering into the supported decision-making agreement.

Sec. 13.56.020. Eligibility of supporters. A supporter must be an adult, but may not be

(1) an employer or employee of the principal, unless the employer or employee is an immediate family member of the principal;

(2) a person who provides paid support services, except decision-making assistance, directly to the principal, unless the person is an immediate family member of the principal; or

(3) a person against whom a protective order or restraining order has been entered by a court on request of or on behalf of the principal.

Sec. 13.56.030. Contents of agreement. (a) A supported decision-making agreement must

(1) name one or more adults to provide a principal with decision-making assistance; and

(2) describe the decision-making assistance that each supporter may provide the principal.

(b) A supported decision-making agreement must contain a notice to third parties that summarizes the rights and obligations of the supporter under this chapter and expressly identifies this chapter.

(c) A supported decision-making agreement may

(1) name an alternate supporter to act in the place of a supporter and the circumstances under which the alternate supporter may act;

(2) authorize a supporter to share information with another supporter named in the agreement, including an alternate supporter.

Sec. 13.56.040. Requirements for validity. A supported decision-making agreement is valid if

(1) the agreement is dated and in writing;

(2) the agreement satisfies the requirements of AS 13.56.010 -

1 13.56.030 and 13.56.050;

2 (3) the agreement has been signed by the principal and each named
3 supporter, including any alternate supporter, and the

4 (A) signing takes place in the presence of two witnesses who
5 also sign the agreement; or

6 (B) signatures of the principal and each named supporter,
7 including any alternate supporter, are notarized; and

8 (4) when the principal has a guardian or conservator, the principal has
9 notified the guardian or conservator of the agreement.

10 **Sec. 13.56.050. Declarations by supporters.** A supported decision-making
11 agreement must contain a separate declaration for each supporter that states the
12 supporter's relationship with the principal, states the willingness of the supporter to act
13 as a supporter for the principal, and indicates that the supporter acknowledges the
14 duties of a supporter under this chapter. Each declaration must be signed by the
15 supporter making the declaration.

16 **Sec. 13.56.060. Witnesses.** (a) Each witness under AS 13.56.040 must be an
17 adult who understands the means of communication used by the principal, except, if
18 there is an individual who understands the principal's means of communication present
19 to assist during the execution of the supported decision-making agreement, the
20 witnesses are not required to understand the means of communication used by the
21 principal.

22 (b) A witness under AS 13.56.040 may not be a supporter named in the
23 supported decision-making agreement or an employee or agent of a supporter named
24 in the supported decision-making agreement.

25 **Sec. 13.56.070. Term of agreement.** A supported decision-making agreement
26 may indicate the date it becomes effective and its duration. If the supported decision-
27 making agreement does not indicate the date it becomes effective, the supported
28 decision-making agreement becomes effective immediately. If a supported decision-
29 making agreement does not indicate its duration, the supported decision-making
30 agreement remains effective until terminated under AS 13.56.080.

31 **Sec. 13.56.080. Termination of agreement.** (a) A principal may at any time

1 terminate all or a portion of a supported decision-making agreement. A supporter may
 2 at any time terminate all or a portion of the supporter's obligations under a supported
 3 decision-making agreement, including the declaration of support described in
 4 AS 13.56.050.

5 (b) A termination under (a) of this section must be in writing and signed, and

6 (1) the signing must take place in the presence of two witnesses who
 7 also sign the termination; or

8 (2) the signature must be notarized.

9 (c) A principal or supporter terminating all or a portion of a supported
 10 decision-making agreement shall notify, in person, by certified mail, or by electronic
 11 means, the other party to the agreement that the agreement has been terminated.

12 (d) If all or a portion of a supported decision-making agreement is terminated
 13 under this section and the termination is consistent with this section, the remainder of
 14 the agreement remains in effect.

15 **Sec. 13.56.090. Duties of supporter.** A supporter shall act with the care,
 16 competence, and diligence ordinarily exercised by individuals in similar
 17 circumstances.

18 **Sec. 13.56.100. Decision-making assistance of supporter.** (a) Except as
 19 limited by a supported decision-making agreement, a supporter may provide to a
 20 principal the following decision-making assistance about the principal's affairs:

21 (1) assisting with making decisions, communicating decisions, and
 22 understanding information about, options for, the responsibilities of, and the
 23 consequences of decisions;

24 (2) accessing, obtaining, and understanding information that is relevant
 25 to decisions necessary for the principal to manage the principal's affairs, including
 26 medical, psychological, financial, and educational information, medical treatment
 27 records, and other records;

28 (3) ascertaining the wishes and decisions of the principal, assisting in
 29 communicating those wishes and decisions to other persons, and advocating to ensure
 30 the implementation of the principal's wishes and decisions; and

31 (4) accompanying the principal and participating in discussions with

1 other persons when the principal is making decisions or attempting to obtain
2 information for decisions.

3 (b) Under (a)(2) of this section, a supporter may use the principal's dated
4 consent to assist the principal in obtaining protected health information under the
5 Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or
6 educational records under 20 U.S.C. 1232g (Family Educational Rights and Privacy
7 Act of 1974).

8 **Sec. 13.56.110. Prohibited activities.** A supporter may not

- 9 (1) exert undue influence on the principal;
- 10 (2) make decisions for or on behalf of the principal;
- 11 (3) sign for the principal or provide an electronic signature of the
12 principal to a third party;
- 13 (4) obtain, without the consent of the principal, information that is not
14 reasonably related to matters with which the supporter may assist the principal under
15 the supported decision-making agreement; or
- 16 (5) use, without the consent of the principal, information acquired for a
17 purpose authorized by this chapter for a purpose other than assisting the principal to
18 make a decision under the supported decision-making agreement.

19 **Sec. 13.56.120. Confidentiality, handling, and disposal of information.** A
20 supporter shall keep the information collected by the supporter on behalf of the
21 principal under this chapter confidential, may not use the information for a use that is
22 not authorized by the principal, shall protect the information from unauthorized
23 access, use, or disclosure, and shall dispose of the information properly when
24 appropriate.

25 **Sec. 13.56.130. Recognition of decisions and requests.** A person shall
26 recognize a decision or request made or communicated with the decision-making
27 assistance of a supporter under this chapter as the decision or request of the principal
28 for the purposes of a provision of law, and the principal or supporter may enforce the
29 decision or request in law or equity on the same basis as a decision or request of the
30 principal.

31 **Sec. 13.56.140. Limitation of liability.** (a) A person who, in good faith, either

1 acts in reliance on an authorization in a supported decision-making agreement or
 2 declines to honor an authorization in a supported decision-making agreement is not
 3 subject to civil or criminal liability or to discipline for unprofessional conduct for

4 (1) complying with an authorization in a supported decision-making
 5 agreement, if the person is complying based on an assumption that the underlying
 6 supported decision-making agreement was valid when made and has not been
 7 terminated under AS 13.56.080;

8 (2) declining to comply with an authorization in a supported decision-
 9 making agreement if the person is declining based on actual knowledge that the
 10 supported decision-making agreement is invalid or has been terminated under
 11 AS 13.56.080;

12 (3) declining to comply with an authorization related to health care in a
 13 supported decision-making agreement, if the person is declining because the action
 14 proposed to be taken under the supported decision-making agreement is contrary to
 15 the good faith medical judgment of the person or to a written policy of a health care
 16 institution that is based on reasons of conscience.

17 (b) In this section, "good faith" means honesty in fact and the observance of
 18 reasonable standards of fair dealing.

19 **Sec. 13.56.150. Capability and capacity.** (a) In the application of this chapter,
 20 a decision that a principal is incapable of managing the principal's affairs may not be
 21 based on the manner in which the principal communicates with others.

22 (b) An adult who enters into a supported decision-making agreement may act
 23 without the decision-making assistance of the supporter.

24 (c) A person may not use the execution of a supported decision-making
 25 agreement as evidence that the principal does not have capacity.

26 (d) In this chapter, a principal is considered to have capacity even if the
 27 capacity is achieved by the principal receiving decision-making assistance.

28 **Sec. 13.56.160. Principal's affairs.** This chapter applies to decisions related to
 29 the following affairs of a principal:

30 (1) monitoring health, obtaining, scheduling, implementing, and
 31 coordinating health and support services, understanding health care information and

options, providing for care and comfort, and other health care and personal matters in which the principal makes decisions about the principal's health care;

(2) managing income and assets and the use of income and assets for clothing, support, care, comfort, education, shelter, and payment of other liabilities of the principal;

(3) handling personal, health care, and financial matters that arise in the course of daily living;

(4) monitoring information about the principal's support services, including future necessary or recommended support services;

(5) living arrangements, including where and with whom the principal wants to live; and

(6) working arrangements, including where the principal wants to work.

Sec. 13.56.170. Support services. The following are considered support services under this chapter:

(1) house repair, home cleaning, laundry, shopping, and providing meals;

(2) transportation, accompanying a principal, and facilitating a principal's written, oral, and electronic communication;

(3) nurse visitations and attendant care;

(4) provision of health care;

(5) physical and psychosocial assessments;

(6) financial assessments and advice on banking, taxes, loans, investments, and management of real property;

(7) legal assessments and advice;

(8) education and educational assessments and advice;

(9) assistance with bathing, dressing, eating, range of motion, toileting, transferring, ambulation, and other direct assistance with the activities of daily living;

(10) care planning;

(11) services that assist in maintaining the independence of a principal.

Sec. 13.56.180. Form for supported decision-making agreement. A

supported decision-making agreement must be in substantially the following form:

STATUTORY FORM FOR
SUPPORTED DECISION-MAKING AGREEMENT

(1) INTRODUCTION. I, _____, want to have one or more persons I trust help me make decisions, obtain and understand the information I need to make my decisions, and tell other people about my decisions. The people who will help me are my "supporters."

I can name three supporters in this form. If I want to have more than three supporters, I can use a form that is substantially similar to this form to enter into a supported decision-making agreement with the additional supporters.

This is a written agreement between me ("principal") and each of my supporters. I can say in this agreement what kind of help each of my supporters will give me. A SUPPORTER APPOINTED UNDER THIS AGREEMENT DOES NOT MAKE DECISIONS FOR ME.

My supporters may share information with each other (select one of the following):

Yes [] No []

(2) SUPPORTERS. These are my supporters:

SUPPORTER NO. 1

Name: _____

Address: _____

Telephone number: _____

Electronic mail address: _____

I want this supporter to help me with (mark any of the following you want):

[] Making choices about food and clothing

[] Making choices about where and with whom I live

[] Making choices about my health and health care

[] Making choices about how I spend my time

1 [] Making choices about where I work
 2 [] Making choices about my support services
 3 [] Making choices about how I spend my money and how I
 4 save my money

5 [] Making choices about legal matters
 6 [] Making choices about (list other areas the supporter will
 7 help you with):

8 _____
 9 _____

10 I do not want this supporter to help me with:

11 _____
 12 _____

13 SUPPORTER NO. 2

14 Name: _____

15 Address: _____

16 Telephone number: _____

17 Electronic mail address: _____

18 I want this supporter to help me with (mark any of the following you
 19 want):

20 [] Making choices about food and clothing
 21 [] Making choices about where and with whom I live
 22 [] Making choices about my health and health care
 23 [] Making choices about how I spend my time
 24 [] Making choices about where I work
 25 [] Making choices about my support services
 26 [] Making choices about how I spend my money and how I
 27 save my money

28 [] Making choices about legal matters
 29 [] Making choices about (list other areas the supporter will
 30 help you with):

31 _____

I do not want this supporter to help me with:

SUPPORTER NO. 3

Name: _____

Address: _____

Telephone number: _____

Electronic mail address: _____

I want this supporter to help me with (mark any of the following you want):

☐ Making choices about food and clothing

☐ Making choices about where and with whom I live

☐ Making choices about my health and health care

☐ Making choices about how I spend my time

☐ Making choices about where I work

☐ Making choices about my support services

☐ Making choices about how I spend my money and how I

save my money

☐ Making choices about legal matters

☐ Making choices about (list other areas the supporter will

help you with):

I do not want this supporter to help me with:

ALTERNATE SUPPORTER. If one of my supporters dies, becomes unable to act as my supporter, refuses to act as my supporter, or terminates the supporter's part of this agreement, I want the following person to become my supporter and help me with the areas the original

1 supporter was helping me with:

2 Name: _____

3 Address: _____

4 Telephone number: _____

5 Electronic mail address: _____

6 (3) INFORMATION ACCESS FORMS. I am attaching to this
7 agreement (mark yes or no for each choice below):

8 A form that lets my supporter(s) obtain my health information
9 under the Health Insurance Portability and Accountability Act

10 Yes ☐ No ☐

11 A form that lets my supporter(s) see my educational records
12 under the Family Educational Rights and Privacy Act of 1974

13 Yes ☐ No ☐

14 (4) GUARDIANS AND CONSERVATORS. If I have a
15 guardian or conservator, I must notify the guardian or conservator
16 about this agreement. If this agreement encroaches on the authority of
17 that guardian or conservator, the guardian or conservator must approve
18 this agreement in writing.

19 ☐ I have a guardian, and I have notified the guardian about
20 this agreement.

21 ☐ I am attaching a signed statement by my guardian approving
22 my use of this agreement.

23 ☐ I have a conservator, and I have notified the conservator
24 about this agreement.

25 ☐ I am attaching a signed statement by my conservator
26 approving my use of this agreement.

27 (5) NOTICE TO THIRD PARTIES. This is a summary of the
28 rights and obligations of a supporter under AS 13.56, the chapter that
29 authorizes making this agreement. A supporter does not make decisions
30 for the principal, but a supporter may provide a principal with help
31 when making decisions, obtaining information for decision,

communicating decisions, and understanding the options, responsibilities, and consequences of decisions. A supporter may accompany the principal and participate in discussions with other persons. The principal sets out in this agreement the areas in which the supporter may help the principal with decisions.

A third party must recognize a decision or request of the principal that is made or communicated with the assistance of a supporter as the decision or request of the principal (AS 13.56.130). The principal or supporter may enforce the decision or request in law or equity. A principal may act without the help of the supporter.

(6) DURATION AND TERMINATION OF AGREEMENT. I can end all or part of this agreement at any time by giving notice to my supporter(s). My termination must be signed and notarized or witnessed like this agreement. This agreement starts _____ (date) and will continue until the agreement is terminated by me or my supporter(s).

(7) SIGNATURE OF PRINCIPAL. I know that I do not have to sign this agreement. I am entering into this agreement voluntarily and without coercion or undue influence. I understand the nature and effect of this agreement. I know that I can change this agreement at any time.

Signature: _____

Printed name: _____

Telephone number: _____

Electronic mail address: _____

Date: _____

(8) SIGNATURES OF SUPPORTERS.

Signature of Supporter No. 1

Signature: _____

Printed name: _____

Name: _____

Address: _____

Telephone number: _____

Electronic mail address: _____

Name: _____

Address: _____

Telephone number: _____

Electronic mail address: _____

Date: _____

Signature of Supporter No. 2

Signature _____

Printed name: _____

Date: _____

Signature of Supporter No. 3

Signature: _____

Printed name: _____

Date: _____

Signature of Alternate Supporter

Signature: _____

Printed name: _____

Date: _____

(9) DECLARATIONS OF SUPPORTERS.

DECLARATION OF SUPPORTER NO. 1. I, _____,
am the principal's _____ (relationship to the
principal). I am willing to act as the principal's supporter. I
acknowledge my duties as a supporter under AS 13.56.

I understand that my job as a supporter is to help the principal
make decisions, obtain and understand information for decisions,
communicate decisions, and understand the options, responsibilities,
and consequences of decisions. My support may include giving the
principal information in a way that the principal can understand,
discussing pros and cons of decisions, and helping the principal
communicate the principal's decisions.

I will act with care, competence, and diligence. I know that I

may not make decisions for the principal. I will not exert undue influence on the principal. I will not sign for the principal or provide an electronic signature of the principal to a third party. I will keep the principal's information confidential. I will not use information I receive under this agreement for a purpose other than as authorized by the principal for decision making, unless the principal consents to another use.

Signature: _____

Printed name: _____

Date: _____

DECLARATION OF SUPPORTER NO. 2. I, _____, am the principal's _____ (relationship to the principal). I am willing to act as the principal's supporter. I acknowledge my duties as a supporter under AS 13.56.

I understand that my job as a supporter is to help the principal make decisions, obtain and understand information for decisions, communicate decisions, and understand the options, responsibilities, and consequences of decisions. My support may include giving the principal information in a way that the principal can understand, discussing pros and cons of decisions, and helping the principal communicate the principal's decisions.

I will act with care, competence, and diligence. I know that I may not make decisions for the principal. I will not exert undue influence on the principal. I will not sign for the principal or provide an electronic signature of the principal to a third party. I will keep the principal's information confidential. I will not use information I receive under this agreement for a purpose other than as authorized by the principal for decision making, unless the principal consents to another use.

Signature: _____

Printed name: _____

1 Date: _____

2 DECLARATION OF SUPPORTER NO. 3. I, _____,
3 am the principal's _____ (relationship to the
4 principal). I am willing to act as the principal's supporter. I
5 acknowledge my duties as a supporter under AS 13.56.

6 I understand that my job as a supporter is to help the principal
7 make decisions, obtain and understand information for decisions,
8 communicate decisions, and understand the options, responsibilities,
9 and consequences of decisions. My support may include giving the
10 principal information in a way that the principal can understand,
11 discussing pros and cons of decisions, and helping the principal
12 communicate the principal's decisions.

13 I will act with care, competence, and diligence. I know that I
14 may not make decisions for the principal. I will not exert undue
15 influence on the principal. I will not sign for the principal or provide an
16 electronic signature of the principal to a third party. I will keep the
17 principal's information confidential. I will not use information I receive
18 under this agreement for a purpose other than as authorized by the
19 principal for decision making, unless the principal consents to another
20 use.

21 Signature: _____

22 Printed name: _____

23 Date: _____

24 DECLARATION OF ALTERNATE SUPPORTER. I,
25 _____, am the principal's _____
26 (relationship to the principal). I am willing to act as the principal's
27 supporter in the place of another supporter. I acknowledge the duties as
28 a supporter under AS 13.56.

29 I understand that my job as a supporter would be to help the
30 principal make decisions, obtain and understand information for
31 decisions, communicate decisions, and understand the options,

responsibilities, and consequences of decisions. My support may include giving the principal information in a way that the principal can understand, discussing pros and cons of decisions, and helping the principal communicate the principal's decisions.

I will act with care, competence, and diligence. I know that I may not make decisions for the principal. I will not exert undue influence on the principal. I will not sign for the principal or provide an electronic signature of the principal to a third party. I will keep the principal's information confidential. I will not use information I receive under this agreement for a purpose other than as authorized by the principal for decision making, unless the principal consents to another use.

Signature: _____

Printed name: _____

Date: _____

(10) NOTARIZATION OR WITNESSING. The signatures on this agreement must be either (1) notarized, or (2) witnessed by two witnesses.

NOTARIZATION

State of _____

_____ Judicial District

On this _____ day of _____, in the year _____, before me, _____ (name of notary public), appeared _____ (name of principal), and _____ (name of each supporter and alternate supporter named in the agreement), personally known to me to be the persons who executed this agreement, and each acknowledged to me that each executed the agreement as the person's free and voluntary act and deed for the uses and purposes under this agreement.

Witness my hand and official seal the day and year written above.

 (Signature of notary public)

(Seal, if any)

 (Title and rank)

My commission expires: _____

WITNESSING

If the signatures are not notarized, two adults must witness the signatures of the principal, the supporter(s), and any alternate supporter, and all must sign together in the presence of the witnesses. A witness CANNOT be a supporter named in this agreement. The witnesses CANNOT be employees or agents of the supporter(s) named in this agreement. Unless a person who understands the principal's means of communication is present to assist when the agreement is signed, each witness must understand the means of communication used by the principal.

1. Witness signature: _____

Printed name: _____

Date: _____

2. Witness signature: _____

Printed name: _____

Date: _____

(11) APPROVAL BY GUARDIAN. I am the guardian of _____ . I have read and understand the nature and effect of this agreement. I approve the use of this agreement by _____ (name of principal) to obtain support in making decisions.

Signature: _____

Printed name: _____

Date: _____

(12) APPROVAL BY CONSERVATOR. I am the conservator

1 of _____. I have read and understand the nature
 2 and effect of this agreement. I approve the use of this agreement by
 3 _____ (name of principal) to obtain support in
 4 making decisions.

5 Signature: _____

6 Printed name: _____

7 Date: _____

8 **Sec. 13.56.190. Definitions.** In this chapter, unless the context indicates
 9 otherwise,

10 (1) "adult" means an individual who is 18 years of age or older;

11 (2) "affairs" means the affairs described in AS 13.56.160;

12 (3) "capacity" means the ability to understand and appreciate the
 13 nature and consequences of a decision and the ability to reach and communicate an
 14 informed decision;

15 (4) "conservator" means a person appointed a conservator under
 16 AS 13.26.401 - 13.26.595 or a similar law of another state;

17 (5) "decision" means a decision relating to the affairs of a principal;

18 (6) "decision-making assistance" means the decision-making
 19 assistance described in AS 13.56.100;

20 (7) "guardian" means a person appointed a guardian under
 21 AS 13.26.201 - 13.26.316 or a similar law of another state;

22 (8) "immediate family member" means a spouse, child, sibling, parent,
 23 grandparent, grandchild, stepparent, stepchild, or stepsibling;

24 (9) "person" means an individual, health care institution, health care
 25 provider, corporation, partnership, limited liability company, association, joint
 26 venture, government, governmental subdivision, governmental agency, governmental
 27 instrumentality, public corporation, or another legal or commercial entity;

28 (10) "principal" means an adult who enters into a supported decision-
 29 making agreement under this chapter to receive decision-making assistance;

30 (11) "supported decision-making agreement" means an agreement
 31 authorized under AS 13.56.010;

1 (12) "supporter" means an adult who enters a supported decision-
2 making agreement and provides decision-making assistance;

3 (13) "support services" means the support services described in
4 AS 13.56.170.

5 **Sec. 13.56.195. Short title.** This chapter may be cited as the Supported
6 Decision-Making Agreements Act.

7 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INDIRECT COURT RULE AMENDMENT. AS 13.56.150(c), added by sec. 1 of this
10 Act, has the effect of changing Rule 402, Alaska Rules of Evidence, by prohibiting the
11 execution of a supported decision-making agreement from being used as evidence of a
12 principal's incapacity. In this section, "principal" and "supported decision-making agreement"
13 have the meanings given in AS 13.56.190, added by sec. 1 of this Act.

14 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 CONDITIONAL EFFECT. AS 13.56.150(c), added by sec. 1 of this Act, takes effect
17 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.
18 IV, sec. 15, Constitution of the State of Alaska.